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8

9 **BEFORE THE ARIZONA STATE BOARD OF PHARMACY**

10 In the Matter of

Board Case No. 12-0028-PHR

11
12 **CRYSTAL CARNEY,**

13 Holder of License No. 7850
14 as a Pharmacy Technician
in the State of Arizona;

15 **MICHAEL MANTSCH,**
16 (Pharmacist-in-Charge)

17 Holder of License No. 12363
18 as a Pharmacist in the
19 State of Arizona

20 and

21 **OMNICARE OF CHANDLER**

22 Holder of Pharmacy Permit No. 3161
23 in the State of Arizona

**CONSENT AGREEMENT,
FOR CIVIL PENALTY AND
CONTINUING EDUCATION**

24 In the interest of a prompt and judicious settlement of this case, consistent with the
25 public interest, statutory requirements and the responsibilities of the Arizona State Board
26 of Pharmacy ("Board") under A.R.S. § 32-1901, *et. seq.*, Michael Mantsch, holder of

1 Pharmacist License No. 12363 in the State of Arizona ("Respondent") and Omnicare of
2 Chandler, holder of Pharmacy Permit No. 3161 in the State of Arizona ("Respondent"),
3 and the Board enter into the following Recitals, Findings of Fact, Conclusions of Law and
4 Order ("Consent Agreement") as a final disposition of this matter.

5 RECITALS

6 1. Respondent Michael Mantsch and Respondent Omnicare of Chandler enter
7 into this Consent Agreement as Respondents separate and apart from Pharmacy
8 Technician Crystal Carney. Resolution of Board Case 12-0028-PHR through this Consent
9 Agreement is between the Board and Respondent Mantsch and Respondent Omnicare of
10 Chandler. This agreement does not resolve the Board's action against Crystal Carney who
11 is not referred to as a Respondent in this Consent Agreement. The Board action against
12 Ms. Carney is scheduled for hearing on January 25, 2012 at 9:00 A. M. and that hearing
13 will proceed as scheduled irrespective of the resolution of the Board action in this case
14 through this Consent Agreement.

15 2. Respondents have read and understand this Consent Agreement and
16 had the opportunity to discuss this Consent Agreement with an attorney, or have waived
17 the opportunity to discuss this Consent Agreement with an attorney.

18 3. Respondents understand that they have a right to a public administrative
19 hearing concerning the above-captioned matter, at which hearing they could present
20 evidence and cross examine witnesses. By entering into this Consent Agreement,
21 Respondents knowingly and voluntarily relinquish all right to such an administrative
22 hearing, as well as rights of rehearing, review, reconsideration, appeal, judicial review or
23 any other administrative and/or judicial action, concerning the matters set forth herein.

24 4. Respondents affirmatively agree that this Consent Agreement shall be
25 irrevocable.

26

1 5. Respondents understand that this Consent Agreement or any part of the
2 agreement may be considered in any future disciplinary action by the Board.

3 6. Respondents understand that this Consent Agreement deals with Board Case
4 No. 12-0028-PHR involving allegations of unprofessional conduct against Respondents.
5 The investigation into these allegations against Respondents shall be concluded upon the
6 Board's adoption of this Consent Agreement.

7 7. Respondents understand that this Consent Agreement does not constitute a
8 dismissal or resolution of any other matters currently pending before the Board, if any,
9 and does not constitute any waiver, express or implied, of the Board's statutory authority
10 or jurisdiction regarding any other pending or future investigation, action or proceeding.

11 8. Respondents also understand that acceptance of this Consent Agreement
12 does not preclude any other agency, subdivision, or officer of this State from instituting
13 any other civil or criminal proceedings with respect to the conduct that is the subject of
14 this Consent Agreement.

15 9. Respondents acknowledge and agree that, upon signing this Consent
16 Agreement and returning this document to the Board's Executive Director, they may not
17 revoke their acceptance of the Consent Agreement or make any modifications to the
18 document regardless of whether the Consent Agreement has been signed by the Executive
19 Director. Any modification to this original document is ineffective and void unless
20 mutually agreed by the parties in writing.

21 10. This Consent Agreement is subject to the approval of the Board and is
22 effective only when accepted by the Board and signed by the Board's Executive Director.
23 In the event that the Board does not approve this Consent Agreement, it is withdrawn and
24 shall be of no evidentiary value and shall not be relied upon nor introduced in any action
25 by any party, except that the parties agree that should the Board reject this Consent
26 Agreement and this case proceeds to hearing, Respondents shall assert no claim that the

1 Board was prejudiced by its review and discussion of this document or any records
2 relating thereto.

3 11. If a court of competent jurisdiction rules that any part of this Consent
4 Agreement is void or otherwise unenforceable, the remainder of the Consent Agreement
5 shall remain in full force and effect.

6 12. Respondents understand that this Consent Agreement is a public record that
7 may be publicly disseminated as a formal action of the Board and may be reported as
8 required by law to the National Practitioner Data Bank and the Healthcare Integrity and
9 Protection Data Bank.

10 13. Respondents understand that any violation of this Consent Agreement
11 constitutes unprofessional conduct and may result in disciplinary action. A.R.S. §§ 32-
12 1901.01(A)(19) and (B)(20), A.R.S. § 32-1927(A), and A.R.S. § 32-1927.02(A).

13 14. Respondents agree that the Board will adopt the following Findings of Fact,
14 Conclusions of Law and Order.

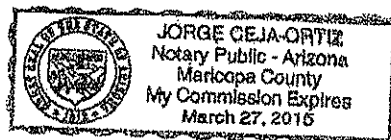
15 **ACCEPTED AND AGREED BY RESPONDENT**

16
17 Jeffrey S. Ramsey Dated: 1/22/13
18 Jeffrey S. Ramsey on behalf of Omnicare of Chandler

19 Subscribed and sworn to before me in the County of Maricopa, State of
20 Arizona, this 22 day of January, 2013, by
21 Jeffrey S. Ramsey, on behalf of Omnicare of Chandler.

22 NOTARY PUBLIC

23 My Commission expires: March 27, 2015



1 **ACCEPTED AND AGREED BY RESPONDENT**

2 *Michael Mantsch*
3 Michael Mantsch, Pharmacist-in Charge

Dated: 1/21/2013

4 Subscribed and sworn to before me in the County of Maricopa State of
5 Arizona, this 21st day of January, 2013, by
6 Michael Mantsch

7 *Kelly Labadie*
8 NOTARY PUBLIC

9 My Commission expires: DEC 10, 2014



10 **FINDINGS OF FACT**

- 11
- 12 1. The Board is the duly constituted authority for licensing and regulating the
- 13 practice of pharmacy in the State of Arizona.
- 14 2. Respondent Michael Mantsch is the holder of License No. 12363 to practice
- 15 as a Pharmacist in the State of Arizona.
- 16 3. Respondent Omnicare of Chandler is the holder of Pharmacy Permit
- 17 No. 3161 allowing it to operate a pharmacy in Arizona.
- 18 4. Crystal Carney is the holder of License No. 7650 allowing her to practice as
- 19 a pharmacy technician in the State of Arizona.
- 20 5. At the time of the events described in paragraph 7, Ms. Carney worked as a
- 21 pharmacy technician and Mantsch worked as the pharmacist-in-charge at Omnicare of
- 22 Chandler located at 6825 W. Galveston, #3, Chandler, Arizona (the "Pharmacy").
- 23 6. On January 24, 2007, the Board granted Pharmacy a waiver of R4-23-
- 24 402(A)(11) to allow a pharmacy technician to verify the completed prescription using the
- 25 Pharmacy's computer system. On November 14, 2012, the waiver was rescinded by the
- 26 Board.

1 7. On October 21, 2011, Ms. Carney incorrectly filled a prescription for
2 morphine 10mg/5cc with morphine 20mg/1cc. When Ms. Carney scanned the barcode on
3 the prescription she filled and compared it to the barcode on the product, a mismatch
4 occurred. Ms. Carney did not obtain pharmacist verification for the mismatch. Ms.
5 Carney was able to verify the prescription by typing the NDC code from the misfilled
6 prescription. Ms. Carney believed that management was aware that she could perform
7 this task, while Respondents disagree. The product was sent out without being checked
8 by a pharmacist. After discovering her error, Ms. Carney reported the incident to her
9 supervisor at approximately 4:00 p.m. on October 24, 2011. This resulted in the patient
10 receiving a medication that was greater than the strength prescribed.

11 8. Technicians no longer verify any completed prescriptions. Since the events
12 described in paragraph 7, Omnicare has taken corrective action that includes the
13 following: All strengths of liquid morphine have been physically separated from one
14 another on the shelf; An audit confirmed that all other morphine prescriptions were
15 appropriately filled; All pharmacists and technicians have been trained in Policy 088
16 "Final Verification Policy" (Revised 7/16/10) attachment A; All pharmacists and
17 technicians have acknowledged in writing that they understand and will comply with the
18 Final Verification Policy; The computer operating system was initially modified to disable
19 controlled substances from the tech scan function, and it was subsequently modified to
20 disable all medications and products – controlled and non-controlled; Pharmacists have
21 been informed of their obligation to perform verifications on all medications and products;
22 A complete list of phone contacts for emergency notification has been posted and
23 provided to all pharmacists and technicians; Training and Medication Safety Alert notices
24 were provided for MS Concentrate; Best practices were updated and implemented for all
25 controlled substances, including chain of custody; and, Implemented daily review of the
26 Verification Discrepancy Report.

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CONCLUSIONS OF LAW

9. The Board possesses jurisdiction over the subject matter and over Respondents pursuant to A.R.S. § 32-1901 *et seq.*

10. The Board may discipline the holder of a pharmacy permit who has engaged in unprofessional conduct. A.R.S. § 32-1927.02(A).

11. The Board may discipline a pharmacist who has engaged in unprofessional conduct. A.R.S. § 32-1927(A).

12. The conduct and circumstances described above constitutes unprofessional conduct pursuant to A.R.S. § 32-1901.01(A)(6) and (B)(10) (Violating a federal or state law or administrative rule relating to marijuana, prescription-only drugs, narcotics, dangerous drugs, controlled substances or precursor chemicals).

13. The conduct and circumstances described above violated A.A.C. R4-23-1104(C) (A pharmacy technician or pharmacy technician trainee shall not perform a function reserved for a pharmacist.).

ORDER

Based upon the above Findings of Fact and Conclusions of Law, the Board issues the following Order:

1. Respondent Mantsch shall pay a civil penalty of \$1,000.00 within 90 days of the effective date of this Consent Agreement;

2. Respondent Mantsch shall successfully complete and provide proof of successful completion to the Board of six (6) contact hours (0.6 C.E.U.) of American Council on Pharmaceutical Education course(s) on the topic of error prevention. The required course(s) must be completed within **90 days** of the effective date of this Order, must be pre-approved by Board staff, and shall be in addition to the requirements of A.R.S. § 32-1936 and A.A.C. R4-23-204. Respondent shall pay all costs associated with complying with this Consent Agreement;

4. If either Respondent violates this Order in any way or fails to fulfill the requirements of this Order, the Board, after giving the Respondent notice and the opportunity to be heard, may revoke, suspend or take other disciplinary actions against Respondent's permit or license. The issue at such a hearing will be limited solely to whether this Order has been violated.

DATED this 5th day of February 2013.

ARIZONA STATE BOARD OF PHARMACY

(Seal)

By:

HAL WAND, R.Ph.
Executive Director

ORIGINAL OF THE FOREGOING FILED
this 07 day of FEB, 2013 with:

Arizona State Board of Pharmacy
1616 W. Adams St.
Phoenix, Arizona 85007

COPY OF THE FOREGOING MAILED
BY CERTIFIED AND REGULAR
FIRST-CLASS MAIL this 7 day
of Feb, 2013 to:

Michael Mantsch
3060 E. Cherry Hills Place
Chandler, Arizona 85249

Omnicare of Chandler
6825 W. Galveston, #3
Chandler, Arizona 85226

1 COPY OF THE FOREGOING MAILED
this 7 day of Feb., 2013 to:

2 Paul J. Giancola
3 Snell and Wilmer, L.L.P.
4 One Arizona Center
400 E. Van Buren St.
Phoenix, AZ 85004-2202

5 Montgomery Lee
6 Assistant Attorney General
1275 W. Washington Street, CIV/TES
Phoenix, Arizona 85007
7 Attorney for the State of Arizona

8 Christopher Munns
9 Assistant Attorney General
1275 W. Washington Street, CIV/SGO
Phoenix, Arizona 85007
10 Attorney for the Board

11 By: at
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